

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of County Route BB Approximately 1,200 feet upstream of County Route BB	*743 *743
Maps available for inspection at the County Zoning Administration, 410 South Walnut Street, Appleton, Wisconsin.	
Pierce County (unincorporated areas) (FEMA docket No. 7056)	
Isabelle Creek:	
Just upstream of Main Street	*1,034
Just downstream of Railroad Street	*1,059
St. Croix River:	
About 7,500 feet upstream of mouth	*681
At county boundary	*692
South Fork Kinnickinnic River:	
About 2,000 feet downstream of State Highway 65	*889
Just downstream of State Highway 65	*996
Just upstream of State Highway 65	*1,002
About 3,000 feet upstream of State Highway 65	*1,018
Mississippi River:	
About 1.2 miles downstream of confluence of Rush River	*682
About 2.8 miles upstream of confluence of Rush River	*682
Maps available for inspection at the Pierce County Courthouse, Ellsworth, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 13, 1993.

Francis V. Reilly,
Deputy Administrator, Federal Insurance
Administration.

[FR Doc. 93-11844 Filed 5-18-93; 8:45 am]

BILLING CODE 6710-22-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 92-154; FCC 93-218]

Inclusion of Novice Class Operator License Examinations in the Volunteer-Examiner Coordinator Examination System

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: Novice Class operator license examinations were previously under the *ad hoc* Novice system. This action places them under the volunteer-examiner coordinator (VEC) system. It also provides that General Class

licensees may administer examinations to Technician Class as well as to Novice Class examinees. The rule change is necessary in order to standardize and simplify the license qualification process. Inclusion of Novice examinations in the VEC system eliminates the confusion that now exists because two different systems are used.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted May 3, 1993, and released May 14, 1993. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street NW., Washington, DC. The complete text of this Report and Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street NW., suite 140, Washington, DC 20037.

The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

Summary of Report and Order

1. The Amateur Service Rules have been amended to place the responsibility for the preparation and administration of entry-level Novice Class operator license examinations under the volunteer-examiner coordinator (VEC) system. The Novice Class examinations were previously under the *ad hoc* Novice system. The Commission said the action was taken in order to standardize and simplify the license qualification process. The Commission also said that administering all amateur operator license examinations under the superior VEC system will avoid the confusion that currently exists because of the two different systems. Further, the amateur service license application (Form 610) can be streamlined by the elimination of the separate certifications by volunteer examiners (VEs) administering Novice examinations under the Novice system.

2. The amended rules also permit VECs and VEs to recover their out-of-pocket costs for coordinating and administering Novice examinations. The VECs and VEs, however, when using the examination-by-examination method, can elect not to recover such out-of-pocket costs.

3. Further, the amended rules specify that General Class licensees may administer examinations to Technician Class as well as to Novice Class licensees.

4. The amended rules are set forth at the end of this document.

5. The amended rules are issued under the authority of 47 U.S.C. 154(f)(4) (A), (B), and (J), 154(i), and 303(r).

List of Subjects in 47 CFR Part 97

Examinations, Radio, Volunteers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rules

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301, 609, unless otherwise noted.

2. Section 97.507(c) is revised, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d) to read as follows:

§ 97.507 Preparing an examination.

(c) Each telegraphy message and each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

3. Section 97.511 is revised in its entirety to read as follows:

§ 97.511 Amateur operator license examination.

(a) Each session where an examination for an amateur operator license is administered must be coordinated by a VEC. Each administering VE must be accredited by the coordinating VEC.

(b) Each examination must be administered by 3 VEs, each of whom must hold an FCC-issued amateur

operator license of the class specified below:

(1) For a Novice or Technician Class operator license examination, the administering VEs must hold Amateur Extra, Advanced, or General Class operator licenses; and

(2) For a General, Advanced, or Amateur Extra Class operator license examination, the administering VEs must hold Amateur Extra Class operator licenses.

(c) The administering VEs must make a public announcement before administering an examination for an amateur operator license. The number of candidates at any examination may be limited.

(d) The administering VEs must issue a CSCE to an examinee who scores a passing grade on an examination element.

(e) Within 10 days of the administration of a successful examination for an amateur operator license, the administering VEs must submit the application to the coordinating VEC. If telegraphy element credit is claimed under § 97.505(a)(5), the physician's certification and the patient's release on the license application, Form 610, must be completed.

§ 97.513 [Removed and Reserved]

4. Section 97.513 is removed and reserved.

5. Section 97.521(c) is revised to read as follows:

§ 97.521 VEC qualifications.

* * * * *

(c) Agree to coordinate examinations for any class of amateur operator license;

* * * * *

6. Section 97.527 is amended by revising paragraph (a), by removing paragraph (c), and by redesignating paragraphs (d) through (g) as paragraphs (c) through (f) to read as follows:

§ 97.527 Reimbursement for expenses.

(a) VEs and VECs may be reimbursed by examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coordinating an examination for an amateur operator license.

* * * * *

[FR Doc. 93-11832 Filed 5-18-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 921227-2327]

Taking and importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS is issuing regulations to: implement a program to reduce dolphin mortality by U.S. purse seine vessels intentionally setting on dolphins incidental to tuna fishing; require purse seine vessels of greater than 400 short tons (362.8 metric tons) carrying capacity to operate under valid operator and vessel certificates of inclusion if any part of their fishing trip includes the eastern tropical Pacific Ocean (ETP); and implement certain portions of the recently enacted International Dolphin Conservation Act of 1992 (IDCA). These regulations implement a multilateral agreement (Agreement) entered into by the United States and certain other fishing nations at the annual meeting of the Inter-American Tropical Tuna Commission (IATTC), June 16-18, 1992 (IATTC Annual Meeting) consistent with the IDCA.

EFFECTIVE DATE: This interim final rule is effective May 19, 1993.

Comments on the interim final rule must be received or postmarked on or before July 19, 1993.

ADDRESSES: Comments should be sent to, and supporting documents referenced in this preamble are available from: Dr. Gary Matlock, Acting Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213, TEL 310/980-4000. **FOR FURTHER INFORMATION CONTACT:** Steve Thompson, Assistant to the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213, TEL 310/980-4000.

SUPPLEMENTARY INFORMATION:

Background

Schools of yellowfin tuna frequently swim beneath schools of dolphin in the ETP. Fishermen have used this unique relationship by searching for and herding dolphins to capture the yellowfin tuna swimming below, most often by use of a purse seine net. Fishermen encircle the dolphins with the net with the intent of capturing the tuna and releasing the dolphins.

Unfortunately, dolphins frequently become entangled in the net, and are injured or killed.

The U.S. Government has established regulations that require domestic fishermen to have 100-percent observer coverage, to equip their vessels with special dolphin safety gear and to follow certain procedures for releasing dolphins. Under those regulations, the incidental dolphin mortality in the U.S. tuna purse seine fleet has decreased from an estimated 400,000 per year in the early 1970s to an observed 439 mortalities in the 1992 fishing year. While there was a substantial decline in the number of U.S. purse seine vessels operating in the ETP during that period, the required dolphin protection equipment and procedures established have led to a decrease in the average dolphin kill-per-set to a level near one dolphin-per-set.

While the U.S. dolphin mortality was declining, the tuna fishing effort and dolphin mortality of other nations fishing in the ETP increased markedly. By the mid-1980s, foreign tuna fishermen were killing three or four times the number of dolphins killed by U.S. fishermen. This led Congress to focus on a multilateral approach to limiting dolphin mortalities in this fishery. Section 104(h)(2)(B)(vi) of the Marine Mammal Protection Act (MMPA) as amended in 1988 required the implementation of vessel performance standards to maintain the diligence and proficiency of certificate holders in the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable. Those performance standards were implemented as an interim final rule on May 17, 1990 (55 FR 20458). The 1988 amendments also directed the Secretary of Commerce, through the Secretary of State, to negotiate and enter into international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting yellowfin tuna with purse seines in the ETP, to include provisions for:

- (1) Cooperative research into alternative methods of locating and catching yellowfin tuna that do not involve the taking of marine mammals;
- (2) Cooperative research on the status of affected marine mammal populations;
- (3) Reliable monitoring of the number, rate, and species of marine mammals incidentally taken by vessels of harvesting nations;
- (4) Limitations on incidental take based upon the best scientific information available; and
- (5) The use of the best marine mammal safety techniques and

equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate.

The Multilateral Agreement

On April 21-22, 1992, a Resolution was agreed to at a Special Meeting of the IATTC to adopt a multilateral program with the objectives of: (1) Progressively reducing dolphin mortality in the ETP to levels approaching zero through the setting of annual dolphin mortality limits (DMLs); and (2) seeking ecologically sound means of capturing yellowfin tuna in the ETP at a level that will permit maximum sustained catches year after year, and to limit or eliminate the mortality of dolphins in the ETP. An annual incidental DML was established for the international fleet for each of the years 1993 through 1999, as follows:

Year	Limit (DML)	Percentage of best estimate of current populations: spotted, spinner, and common dolphins
1993	19,500	0.30
1994	15,500	0.24
1995	12,000	0.19
1996	9,000	0.14
1997	7,500	0.11
1998	6,500	0.10
1999	<5,000	<0.08

This Resolution was formally adopted at the IATTC Annual Meeting and an identical Agreement was ratified by all members of the IATTC and certain other nations that are not members of the IATTC but conduct fishing operations in the ETP. The Agreement established a multilateral framework for compliance controls, observer coverage, equitable assignment of DMLs, and sanctions for violations of the Agreement provisions. The Agreement also established a Review Panel and a Scientific Review Board. Copies of the Agreement are available from NMFS upon request (See ADDRESSES).

One of the most important aspects of the program established by the Agreement is the Review Panel, established to review and report on the compliance of all vessels participating in the DML program and to make recommendations to participating nations for sanctions as appropriate. The Review Panel will be responsible for compiling a list of vessels qualified for a DML from each of the participating nations and will assign a DML for each

vessel based on the number of vessels and the established limit for the international fleet for the year, using the formula established by the Agreement. The Review Panel will review reports of all trips in the ETP during the year and will identify any infractions of the Agreement concerning dolphin mortality. The Review Panel will then notify each nation of infractions by vessels under its jurisdiction and review the actions taken by each nation in response to the reported infractions. In an effort to standardize sanctions used by participating nations, the Review Panel will recommend a standardized set of sanctions appropriate for the infractions.

The Review Panel will also make recommendations concerning minimum standards for fishing gear, update the recommendations in response to technological advances, and maintain a list of vessels that carry the needed equipment to reduce dolphin mortality. The Panel will publish an annual report, which will review the operation of the program and recommend modifications to the participating governments, and summarize all identified infractions and actions taken.

The Scientific Advisory Board will assist the Director of the IATTC in matters regarding research to modify current purse seine technology to make it less likely to cause dolphin mortality and to seek alternative means of capturing large yellowfin tunas.

Interim Final Regulations To Implement the Agreement

Existing regulations, found at 50 CFR 216.24(d)(1) through (d)(3), establish specific criteria for operator performance standards. This interim final rule will implement the Agreement for the U.S. fleet in furtherance of the objectives of sections 104 and 108 of the MMPA. These regulations include vessel performance standards intended to further implement these sections of the MMPA by establishing a performance standard system for U.S. purse seine vessels, in addition to the operator performance standards already established.

The vessel standards adopted by the Agreement are annual performance standards, based on calendar years, for the international fleet. Each party to the Agreement is, therefore, required to submit to the Director of the IATTC on or before October 1, a list of purse seine vessels of carrying capacity greater than 400 short tons (362.8 mt) under its jurisdiction that the party believes will set on tunas associated with dolphins in the ETP, and for which the party desires to have a DML assigned for the

following year. For the United States to implement this requirement, this interim final rule will require U.S. vessel owners to submit to the Director, Southwest Region, NMFS (Regional Director), on or before September 1, of each year, the name of each U.S. purse seine vessel greater than 400 short tons (362.8mt) carrying capacity for which the owner desires to obtain a DML for the following year. The Regional Director will compile the list of vessels requiring DMLs and forward it to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), for transmittal to the Director of the IATTC.

The Review Panel will meet to assign, by November 1 of each year, a DML to each qualified vessel of the international fleet. For 1993, each DML is equivalent to 19,500, divided by the total number of qualified vessels from the fleets of the participating nations. The Director of the IATTC will notify NMFS of the DMLs assigned to U.S. vessels for the following year.

Under the terms of the Agreement, each nation may modify the individual vessel DML either upward or downward by 15 percent, as long as the total DML for the nation is not exceeded. For the U.S. fleet, as implemented by this rule, NMFS may make these modifications based upon: (1) The vessel's prior year performance; (2) any planned experimental fishing under an experimental operation waiver of 50 CFR 216.24(d)(2) that might result in dolphin mortalities; or (3) other research programs authorized by the MMPA and NMFS that might result in dolphin mortalities. The prior year's performance might be used to increase a vessel's DML if the vessel's kill-per-set is comparable to the other vessels in the U.S. fleet, but the vessel's kill-per-ton is anomalously low. This would indicate that the harvest of yellowfin tuna by that particular vessel is very efficient in terms of low dolphin mortality, and the incentive of increased DMLs would encourage efficient yellowfin tuna harvesting while maintaining a low incidental dolphin mortality. The total number of DMLs assigned to the U.S. fleet would not change as a result of individual vessel modifications; i.e., increasing one vessel's DML would have the effect of decreasing other vessel's DMLs to keep the total U.S. fleet allocation the same.

Any vessel that does not use its DML by June 1, or that leaves the fishery, will lose its right to use its assigned DML for the remainder of the year. All unused DMLs will be returned to the IATTC to be reassigned to other vessels. For the U.S. fleet, NMFS will determine if a vessel has "left the fishery" for the

remainder of the period covered by the DML. A vessel that sinks will be removed from the fishery, but a decision on a vessel that requires extensive repairs or a vessel that leaves the ETP to operate in other oceans will require an assessment by NMFS of the particular facts involved. NMFS will make every effort to determine whether a vessel intends to return to the fishery before notifying the IATTC that there are unutilized DMLs available as assigned to that vessel, including providing an opportunity for the owner of the vessel to submit relevant information and comments for consideration.

If a U.S. vessel is not assigned a DML for a full year, but desires a DML for the 6-month period July 1 to December 31 of that year, the name of the vessel for consideration must be provided to NMFS by March 15 for forwarding to the Director of the IATTC by April 1. There is no guarantee that there will be DMLs available for vessels previously without DMLs for this period. DMLs will be assigned by the IATTC from the pool of unused DMLs that have been returned to the IATTC. Any unused DMLs in the pool will be divided among the applicants from all nations, but a DML to be assigned to an applicant will not exceed 50 percent of the DML for a vessel with a DML assigned for the entire year.

Under the Agreement, the participating nations have agreed to have 100-percent observer coverage, to consist of at least 50 percent IATTC observers. Under this rule, observers, at least 50 percent from the IATTC and the remainder from NMFS, will accompany all trips by U.S. vessels in the ETP.

The vessel operator will be responsible for determining the balance of the vessel's DML before a vessel departs on a fishing trip and for ensuring that the DML for the vessel is not exceeded. The observer will have a record of the balance of the vessel's DML prior to departure for the trip, and the observer records will be available during the trip, including after each set, so that the vessel operator can determine the balance of the DML remaining at any time. The vessel operator must cease deploying the vessel's purse seine nets to intentionally encircle dolphins when the vessel's DML is reached.

As described above, the Agreement established a Review Panel to monitor compliance by each participating vessel. This rule makes it clear that NMFS will consider the recommendations from the Review Panel regarding sanctions for violations of this program and implement those recommendations as

appropriate. A U.S. purse seine vessel operating under this program that is determined to have made intentional purse seine sets on or to encircle dolphins after the vessel's DML is reached will be disqualified for a DML for the following year, regardless of the number of mortalities. The vessel owner will be notified of the Review Panel's recommendation for sanctions and then be provided a reasonable opportunity to provide information on whether an intentional set was made after the vessel's DML was reached—before a final determination is made by NMFS.

Interim Final Regulations To Require All U.S. ETP Tuna Purse Seine Vessels To Have Valid Certificates of Inclusion

NMFS is amending the regulations at 50 CFR 216.24(a)(2) to require all U.S. purse seine vessels of greater than 400 short tons (362.8 mt) carrying capacity and built after 1960 to operate under valid operator and vessel certificates of inclusion if any part of their fishing trip includes the ETP. This will not alter any of the requirements under the certificates of inclusion program, nor will it alter the observer coverage requirements. It will provide NMFS the authority to require observer coverage on all purse seine vessels of greater than 400 short tons (362.8 mt) carrying capacity that may take marine mammals in this fishery, either by intentional encirclement or by incidental encounter, and provides procedures that cover all instances of marine mammal encounters. For clarification, NMFS is including in this regulation a definition of "carrying capacity."

The International Dolphin Conservation Act of 1992

On October 26, 1992, the President signed into law the IDCA. The IDCA, among other things, amended the MMPA to authorize the Secretary of State to enter into international agreements to establish a global moratorium on the harvesting of tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals. Such a global moratorium would be of at least 5 years duration and would take effect March 1, 1994. In addition to the authorization to enter into an agreement for a global moratorium, the Act also established certain conditions applicable to the U.S. fleet even if no agreement is reached. This interim final rule addresses those provisions.

Interim Final Regulations To Implement the International Dolphin Conservation Act

One provision of the IDCA prohibits U.S. purse seine vessels from deploying purse seine nets to encircle any dolphins if eastern spinner or coastal spotted dolphins are observed prior to release of the net skiff. This is somewhat more restrictive than the current regulations, which prohibit U.S. vessels from deploying their nets to encircle pure schools of eastern spinner or coastal spotted dolphins. This interim final rule amends the regulations to reflect this change.

Another provision of the IDCA established maximum dolphin mortality levels of 1,000 in 1992, and 800 for the 14-month period beginning January 1, 1993. This interim final rule, therefore, reduces the previously established maximum annual marine mammal mortality limit of 20,500 animals and removes the individual marine mammal species quotas; except that the maximum allowable annual take of 250 coastal spotted dolphin (*Stenella attenuata*) and 429 northern tropical striped dolphin (*Stenella coeruleoalba*) shall remain in effect. The coastal spotted dolphin annual quota is established by section 103(h)(2)(B)(iii)(III) of the MMPA. The annual quota for the northern tropical striped dolphin was established by the Assistant Administrator to limit mortalities from any given target stock to a maximum of 50 percent of the 1979 estimated maximum replacement yield of that stock (46 FR 42068, August 19, 1981). There were no recorded mortalities of this species during 1989–1992 fishing years. The requirements for the General Permit have also been modified by the IDCA.

The maximum incidental marine mammal mortalities established by the IDCA were effective upon enactment and take precedence over any total DML for U.S. vessels operating under the IATTC Agreement. The U.S. fleet is therefore limited to an incidental dolphin mortality of no more than 800 during the 14-month period beginning January 1, 1993, even though the DMLs assigned by the IATTC for the U.S. fleet are more than that. The total incidental mortalities for the U.S. fleet will be monitored by NMFS, and U.S. fishermen will be notified by publication in the Federal Register when the quotas are expected to be reached or exceeded.

In addition, minor revisions are made to § 216.24 (b) and (c) to correct typographical errors and update the

address of NMFS' Southwest Regional Office.

Classification

To the extent that this rule implements the IATTC international agreement, it involves a foreign affairs function of the United States, and is not subject to the notice-and-comment and delayed effectiveness requirements of the Administrative Procedure Act pursuant to section 553(a)(1) of that Act. This rule is intended to implement, for U.S. fishermen, the Inter-American Tropical Tuna Commission international agreement, to which the United States is a party. The IATTC agreement calls upon nations fishing for yellowfin tuna in the eastern tropical Pacific Ocean to reduce the levels of incidental dolphin mortality to less than 5,000 by the year 1999, beginning with 1993.

This interim final rule also implements portions of the International Dolphin Conservation Act of 1992, which further restricts incidental dolphin mortality by the U.S. fleet. These restrictions reflect the policy of the United States to eliminate incidental dolphin mortality in the yellowfin tuna fishery in the eastern tropical Pacific Ocean. NMFS has concluded that there is good cause, pursuant to 5 U.S.C. 553(b)(3), to waive advance notice and comment for this rule because it would be contrary to public interest. Likewise, NMFS finds, under 5 U.S.C. 553(d), that there is good cause to issue this rule without a delayed effectiveness period. The intent of Congress is to curb the damage done to dolphin in the commercial tuna industry as soon as possible. Furthermore, a comment period is provided by this interim final rule.

Comments on the interim regulations will be considered if postmarked or received before July 19, 1993. If NMFS is made aware of significant problems in the administration of the provisions of this rule, another interim final rule may be issued prior to issuance of a final rule.

Since notice and an opportunity for comment are not required by law to be given for this rule, preparation of a regulatory flexibility analysis is not required by the Regulatory Flexibility Act and none was prepared.

The Assistant Administrator has determined that this is not a "major rule" requiring regulatory impact analysis under Executive Order 12291. This interim final rule will not have a cumulative effect on the economy of \$100 million or more, nor will it result in major increases in costs to consumers, industries, government

agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collections, found at 50 CFR 216.24(d), have been cleared by OMB. The public reporting burden for this continuing collection of information is estimated to average 0.12 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirements, including suggestions for reducing this burden, to Steve Thompson, Assistant to the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Project No. 0648-0083.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: May 13, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3, definitions for "carrying capacity", "Dolphin Mortality Limit (DML)", "land" or "landing", and "trip" are added in alphabetical order, to read as follows:

§ 216.3 Definitions.

* * * * *

Carrying capacity means the Regional Director's determination of the

maximum amount of fish that a vessel can carry in short tons based on the greater of the amount indicated by the builder of the vessel, a marine surveyor's report, or the highest amount reported landed from any one trip.

* * * * *

Dolphin Mortality Limit (DML) means the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel, unless a shorter time period is specified.

* * * * *

Land or landing means to begin offloading any fish, to arrive in port with the intention of offloading fish, or to cause any fish to be offloaded.

* * * * *

Trip means a voyage starting when a vessel leaves port with all fish wells empty of fish and ending when a vessel unloads all of its fish.

* * * * *

3. In § 216.24, existing paragraphs (a)(2), (b)(1)(ii), (c)(4)(i)(B), (c)(4)(ii) and (d)(2)(i)(A) are revised and new paragraph (d)(2)(x) is added to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(a) * * *

(2)(i) It is unlawful for any person using a Class I (400 short tons (362.8 metric tons) carrying capacity or less) or Class II (greater than 400 short tons (362.8 metric tons) carrying capacity, built before 1961) U.S. purse seine fishing vessel on a fishing involving the utilization of purse seines to capture yellowfin tuna, that is not operating under a Category 2 general permit and certificate(s) of inclusion, to carry more than two speedboats if any part of its fishing trip is in the Pacific Ocean area described in the General Permit for gear Category 2 operations.

(ii) It is unlawful for any person using a Class III (greater than 400 short tons (362.8 metric tons) carrying capacity, built after 1960) U.S. purse seine fishing vessel that does not have and operate under a valid operator and vessel certificate of inclusion, to catch, possess, or land tuna from a fishing trip that includes the Pacific Ocean area described in the General Permit for gear Category 2 operations.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess tuna caught, possessed, or landed in violation of paragraph (a)(2)(ii) of this section.

(iv) It is unlawful for a person subject to the jurisdiction of the United States intentionally to deploy a purse seine net

on, or to encircle, dolphins from a vessel operating in the ETP when the DML assigned to that vessel has been reached, or when there is not a DML assigned to that vessel.

(b) * * *

(1) * * *

(ii) *Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals.* Commercial fishing operations utilizing purse seines to capture tuna by intentionally encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in paragraph (d)(2)(iv) of this section may be included in this category;

(c) * * *

(4) * * *

(i) * * *

(B) Owners of managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands should make application to the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

(ii) *Category 2 applications.* Owners or managing owners of purse seine vessels in this category should make application to the Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

(d) * * *

(2) * * *

(i) * * *

(A) A certificated vessel may take marine mammals only if the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion, subject to the following conditions:

(1) The total dolphin mortalities, including mortalities resulting from research, shall not exceed 1,000 during the period beginning January 1, 1992, and ending December 31, 1992, and 800 during the period beginning January 1, 1993, and ending March 1, 1994, regardless of the total number of individual vessel DMLs assigned to the U.S. fleet; and

(2) The total number of mortalities of coastal spotted dolphin (*Stenella coeruleoalba*) shall not exceed 250, and the total number of mortalities of northern tropical striped dolphin (*Stenella attenuata*) shall not exceed 429, during any year; and

(3) No purse seine net may be deployed on or to encircle any school of dolphins in which any eastern spinner dolphin (*Stenella longirostris*) or coastal spotted dolphin (*Stenella attenuata*) are observed prior to the release of the net skiff.

(x) *Vessel Certificate of Inclusion Holder Performance Requirements*—(A) vessel certificate of inclusion holder desiring a DML for the following year must provide to the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, by September 1, the name of the purse seine vessel(s) of carrying capacity greater than 400 short tons (362.8 mt) that the owner thinks will intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during that year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as required by the IATTC, for assignment of a DML for the following year.

(B) Each vessel certificate of inclusion holder that desires a DML for the period July 1 to December 31, for a vessel that has not previously had a DML assigned for the year, must provide to the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, by March 15, the name of the purse seine vessel(s) of carrying capacity greater than 400 short tons (362.8 mt) that the owner thinks will intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before April 1, or as required by the IATTC, for assignment of a DML for the 6-month period July 1 to December 31. Under the Agreement adopted at the Annual Meeting of the IATTC June 16-18, 1992, the DML shall be assigned from the unutilized pool of DMLs described under paragraph (d)(2)(x)(D) of this section, divided among the applicants for the 6-month period, and shall not exceed 50 percent of the DML assigned to a vessel in the fishery with a DML for the entire year.

(C)(1) NMFS will notify vessel owners of the DML assigned for each vessel for the following year as determined by the IATTC.

(2) NMFS may adjust the DMLs, either upward or downward with 15 percent of the original DML, except that the adjusted DMLs for the U.S. fleet will not exceed the original total of the DMLs for the U.S. fleet as assigned by the IATTC. All adjustments shall be made prior to

December 1, and NMFS shall notify the IATTC prior to December 15. DMLs as assigned on December 1 will be applicable to the following year.

(3) NMFS may make an adjustment of a vessel's DMLs if it will further scientific or technological advancement in the protection of marine mammals in the fishery, or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the MMPA. Experimental fishing operation waivers or scientific research permits shall be considered a basis for adjustments.

(D)(1) Any vessel assigned a DML, that does not participate, by June 1, in this fishery by operating under valid certificates of inclusion, or that leaves the fishery, shall lose its right to utilize its DML for the remainder of the year.

(2) NMFS will determine, based on the available information, whether a vessel has left the fishery. A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates will no longer be conducting purse seine operations in the ETP for the remainder of the period, shall be determined to have left the fishery. NMFS will make all reasonable efforts to determine the intentions of the vessel owner, and the owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and the opportunity to provide information on whether the vessel has left the fishery before NMFS makes a final determination and notifies the IATTC of this determination. The vessel owner will receive written notification of NMFS' final determination.

(3) Any unused DML for a vessel that has been determined to have left the fishery will be returned to the IATTC, to be added to the pool of unutilized DMLs.

(E) Any vessel that exceeds its assigned DML, after any applicable adjustment under paragraph (d)(2)(x)(C)(2) of this section, shall have its DML for the subsequent year reduced by the amount of overage.

(F)(1) The vessel operator and owner are responsible for ensuring that the DML for that vessel is not exceeded.

(2) Observers, either from the IATTC observer program or the NMFS observer program, will make their records available to the vessel operators at any time, including after each set, so that the operator can monitor the balance of the DML remaining for use during the trip.

(3) Vessel captains must cease deploying purse seine sets to encircle dolphins intentionally when the vessel's DML, as adjusted under paragraph (d)(2)(x)(C)(2) of this section, is reached.

(G)(1) Sanctions recommended by the Review Panel for any violation of these rules shall be considered by NMFS in its enforcement of these regulations.

(2) Intentionally deploying a purse seine net on or to encircle dolphins after the vessel's DML is reached will disqualify the vessel from consideration for a DML for the following year. If already assigned, the DMLs for the following year will be withdrawn, and the IATTC notified by NMFS that the DML assigned to that vessel will be

unutilized. The vessel owner will be provided an opportunity to provide information and comments on this issue before a final determination is made by NMFS.

* * * * *

[FR Doc. 93-11814 Filed 5-18-93; 8:45 am]

BILLING CODE 3510-22-M